

REMARKS

This response is made to the Office Action delivered February 12, 2007. In that Office Action, the Examiner imposed restriction requirements among the following groups:

Group I: Claims 1, 3, 4, 6, 15, and 62-76, drawn to controlling distribution of electronic mail messages;

Group II: Claims 12-14, 16-26, 30-46, 52, 53, 55-61, and 78-81, drawn to controlling distribution of network communications in general, comprising sampling and classifying a subset of such communication; and

Group III: Claim 47-51, drawn to controlling distribution in general, comprising tracking and monitoring inbound connections.

The basis for the restriction among the Groups was that examination of the claimed or disclosed species would be burdensome.

Applicants elect to prosecute the subject matter of Group II, claims 12-14, 16-26, 30-46, 52, 53, 55-61, and 78-81 in this application, and withdraw the remaining claims from consideration. However, Applicants respectfully disagree with and traverse the restriction requirement.

MPEP § 803 recognizes two separate requirements that an Examiner must show to make a proper restriction requirement:

1. The inventions must be independent or distinct as claimed; and
2. There would be a serious burden on the Examiner if restriction is not required.

In all restriction requirements, the distinctiveness requirement is governed by MPEP § 806 and the burden requirement by MPEP § 808.02. These are two separate requirements that

must both be satisfied in order to establish a *prima facie* basis for restriction. “Where the related inventions as claimed are shown to be independent or distinct under the criteria of MPEP § 806.05(c) - § 806.06, the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required.” MPEP § 808.2 (emphasis added). Where the burden requirement is not met for a restriction, then that restriction requirement is improper.

Here, the Examiner has not provided any explanation of why a serious burden would be imposed on the Examiner unless the restriction were imposed. Thus, the restriction requirement is improper on its face.

Further, Group I, as noted by the Examiner, relates to electronic mail. Similarly, the provisionally-elected Group II includes claims relating to mail servers, such as claim 52, which recites a mail server operating within an internal communications network. Thus, the Examiner will be required to search substantially the same art for both Groups I and II, and thus there is no serious burden imposed by examining the claims from both Groups I and II. Accordingly, Applicants request that the restriction requirement be withdrawn as between Groups I and II.

The Examiner is invited to contact the undersigned attorney to resolve any further issues.

Respectfully submitted,
VINCENT J. SCHIAVONE ET AL.

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By: /Brian Hoffman/
Brian M. Hoffman, Reg. No.: 39,713
Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Tel.: (650) 335-7607
Fax: (650) 938-5200